

ENTERED

January 04, 2019

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION****JORGE ALBERTO MARTINEZ****Plaintiff,****VS.****GUADALUPE HERNANDEZ, et al.****Defendants.**§
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§**MISC ACTION NO. 7:12-MC-0610****REPORT AND RECOMMENDATION**

Plaintiff is a state prisoner who has filed several pro se pleadings. (Dkt. Nos. 1-7). United States Magistrate Judge Dorina Ramos issued an Order and Notice of Deficiency. (Dkt. No. 8). The Court ordered Plaintiff to either pay the filing fee or to complete an application to proceed *in forma pauperis*. (*Id.*).

Plaintiff responded with a letter stating that he did not intend to initiate a new action, but that he intended to file his pleadings in an ongoing civil case that he does not have the case number for. (Dkt. No. 10 at 3). Plaintiff stated that he believed the case was in front of Judge Hinojosa and was transferred from Brownsville to McAllen. (*Id.*). Plaintiff further states that, by filing these documents, he merely intended to request transport so that he could appear in front of the Court for either an upcoming hearing or trial. (*Id.*).

In light of Plaintiff's adamant statement that he does not wish to initiate a new, separate suit, the undersigned recommends that Plaintiff's action be dismissed without prejudice and the case be closed. Plaintiff's statement is tantamount to a voluntary dismissal. Once a party has moved to voluntarily dismiss the case, the case is "effectively terminated." *Williams v. Ezell*, 531 F.2d 1261, 1263-64 (5th Cir. 1976). Since the opposing party has not yet been served or

responded, the plaintiff “need do no more than file a notice of dismissal with the Clerk. . . . [T]he court has no role to play.” *Am. Cyanamid Co. v. McGhee*, 317 F.2d 295, 297 (5th Cir. 1963). “The notice of dismissal is self-effectuating and terminates the case in and of itself; no order or other action of the district court is required.” *Bechuck v. Home Depot U.S.A., Inc.*, 814 F.3d 287, 291 (5th Cir. 2016).

Plaintiff is free to re-file his documents in the correct case. Plaintiff should take note that in order to file his documents in the desired case, he must give the Clerk of this Court the case number.¹

Recommended Disposition

After a careful review of the record and relevant law, the undersigned recommends that those claims, if any, arising from Plaintiff’s pleadings be **DENIED**, that Plaintiff’s action be **DISMISSED** without prejudice, and the case be closed.

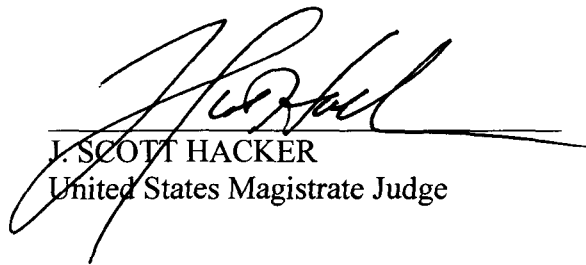
Notice to the Parties

Within fourteen days after being served a copy of this report, a party may serve and file specific, written objections to the proposed recommendations. 28 U.S.C. § 636(b)(1)(C); Federal Rules of Civil Procedure, Rule 72(b). Failure to file written objections within fourteen days after service shall bar an aggrieved party from de novo review by the District Court on an issue covered in this report and from appellate review of factual findings accepted or adopted by the District Court, except on grounds of clear error or manifest injustice.

The clerk of this court shall forward a copy of this document to the parties by any receipted means.

¹ The undersigned has performed a generic name search in an attempt to locate the civil suit Plaintiff describes. Multiple civil cases have been initiated by a Jorge Alberto Martinez in this district, multiple of which appear or appeared before Judge Hinojosa: 7:10-MC-20 (open), 7:10-MC-17 (open), 7:08-MC-37 (closed), 7:07-CV-125 (closed), 7:08-CV-359 (closed). 7:10-MC-20 and 7:10-MC-17 are ongoing but without more specific information provided by Plaintiff, the Court cannot positively identify what case this instant case should be merged with.

SIGNED this 4th day of January, 2019, at McAllen, Texas.



J. SCOTT HACKER
United States Magistrate Judge